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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
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1796

NOTIFICATION DATE	DELIVERY MODE
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12/26/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/539,472	<b>Applicant(s)</b> RABE ET AL.	
	<b>Examiner</b> Gregory R. Del Cotto	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on RCE filed 10/9/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 12-36 are pending. Applicant's amendments and arguments filed 10/9/08 have been entered.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/9/08 has been entered.

#### **Objections/Rejections Withdrawn**

The following objections/rejections as set forth in the Office action mailed 4/10/08 have been withdrawn:

The rejection of claims 12-19, 21, and 22 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP 459,625 has been withdrawn.

The rejection of claim 20 under 35 U.S.C. 103(a) as being unpatentable over EP 459,625 as applied to claims 12-19, 21, and 22 above, and further in view of Jakob et al (US 2002/0127168) has been withdrawn.

The rejection of claims 23-25 under 35 U.S.C. 103(a) as being unpatentable over EP 459,625 as applied to the rejected claims above, and further in view of EP 567,140 has been withdrawn.

***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Objections***

Claim 32 is objected to because of the following informalities:

Note that, Applicant has presented two new claims with the number 32; the second claim 32 should be numbered 33 and the Examiner has treated the second claim 32 as claim 33.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 12-22, 26-32, and 34-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jakob et al (US 2002/0127168).

Jakob et al teach coated sodium percarbonate with improved internal stability and storage stability. See Abstract. Suitable coating agents include sodium carbonate, alkali metal silicates, magnesium sulfate, etc. See para. 28. Jakob et al teach thermal treatment which is preferably carried out in a fluidized bed immediately following the drying state. According to a preferred embodiment, the thermal treatment of the sodium percarbonate is carried out at a temperature in the range from 80 to 120 degrees Celsius at a treatment time from 5 to 60 minutes. See paras. 42-46. Note that, with respect to the available oxygen and fizzing properties of the coated percarbonate particles as recited by the instant claims, the Examiner asserts that the coated percarbonate particles specifically taught by Jakob et al would inherently have the same available oxygen and fizzing properties as recited by the instant claims because Jakob et al teach coated percarbonate particles which are the same as recited by the instant claims. Jakob et al disclose the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of Jakob et al anticipate the material limitations of the instant claims.

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Alternatively, even if the broad teachings of Jakob et al are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed available oxygen and fizzing properties of the composition in order to provide the optimum cleaning properties to the composition because Jakob et al teach that the amounts and types of required components added to the composition may be varied.

Claims 12-19, 21-23, and 26-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP 623,553.

'553 teaches a stabilized sodium percarbonate particle which includes a sodium percarbonate particle having at least one coating layer thereon, wherein the at least one coating layer includes a silicate; magnesium sulfate, and an alkali metal salt selected from the group consisting of alkali metal carbonates, alkali metal bicarbonates, and alkali metal sulfate. The present sodium percarbonate particle is good in solubility and is excellent in its formulation stability with detergent. See Abstract. The temperature of the sodium percarbonate at the time of spray-drying is preferably from 40 to 95 degrees Celsius. Specifically, '553 teaches that percarbonate was placed on a multipore plate of a fluid dry coater. See Example 1. Further, '553 teaches that the percarbonate may be used in combination with a zeolite. See page 5, lines 10-20. '553 discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of '553 anticipates the material limitations of the instant claims.

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Alternatively, even if the broad teachings of '553 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed available oxygen and fizzing properties of the composition in order to provide the optimum cleaning properties to the composition because '553 teach that the amounts and types of required components added to the composition may be varied.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP EP 623,553 as applied to claims 12-19, 21-23, and 26-36 above, and further in view of Jakob et al (US 2002/0127168).

'553 are relied upon as set forth above. However, '553 does not teach the use of a fluidized bed apparatus as recited by instant claim 20.

Jakob et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate a fluidized bed reactor in the process as taught by '553, with a reasonable expectation of success, because Jakob et al teach that spraying and drying including thermal conditioning of a similar coated percarbonate particle may take place in a fluid bed reactor and further, '553 teach that various reactors may be used for spraying and drying with hot air which would encompass fluid bed reactors.

Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jakob et al (US 2002/0127168) as applied to the rejected claims above, and further in view of EP 567,140.



Jakob et al is relied upon as set forth above. However, Jakob et al does not teach the use of zeolites and surfactants in combination with the percarbonate as recited by the instant claims.

'140 teaches a stable sodium percarbonate which can be used in a detergent composition. See Abstract. Surfactants and zeolites may be used in the compositions. See pages 7 and 8.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use the sodium percarbonate as taught by Jakob et al or '625 in a detergent composition containing zeolites or surfactants, with a reasonable expectation of success, because '140 teaches a similar composition containing percarbonate along with zeolites and surfactants and further, Jakob et al teaches the use of sodium percarbonates in detergent compositions in general.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 623,553 as applied to the rejected claims above, and further in view of EP 567,140.

'553 is relied upon as set forth above. However, '553 does not teach the use of surfactants in combination with the percarbonate as recited by the instant claims.

'140 is relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use the sodium percarbonate as taught by '553 in a detergent composition containing surfactants, with a reasonable expectation of success, because '140 teaches a similar composition containing percarbonate along with surfactants and

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further, '553 teaches the use of sodium percarbonates in detergent compositions in general.

Claims 12-26 and 28-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over GB 1,466,799.

'799 teaches a particulate composition comprising an alkali metal persalt selected from alkali metal percarbonates coated with a mixed salt comprising sodium carbonate and a compatible sodium salt. See column 2, lines 45-60. The coating composition comprises from 0.5% to 20% by weight of the persalt. Coating of the persalt particles can be accomplished by sodium carbonate and additionally sodium sulphate, etc. Desirably, the peroxygen compounds may be used in washing or bleaching compositions containing builders, surfactants, etc. See column 3, lines 1-65. A fluidized bed may be used to coat the particles. See column 4, lines 1-20. Note that, with respect to the available oxygen and fizzing properties of the coated percarbonate particles as recited by the instant claims, the Examiner asserts that the coated percarbonate particles specifically taught by '799 would inherently have the same available oxygen and fizzing properties as recited by the instant claims because '799 teaches coated percarbonate particles which are the same as recited by the instant claims. '799 discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of '799 anticipate the material limitations of the instant claims.

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Alternatively, even if the broad teachings of '799 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed available oxygen and fizzing properties of the composition in order to provide the optimum cleaning properties to the composition because '799 teaches that the amounts and types of required components added to the composition may be varied.

Claims 12-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over CA 2,326,560.

'560 teaches a mono or multilayer coated particulate peroxo compound having a core or one or more peroxo compounds and a coating of predominantly inorganic compounds, wherein the core and/or the coating comprise one or more dyes. See claims 1. The peroxo compound is percarbonate, etc. The coating agent comprises alkali metal silicate, sodium carbonate, etc. See claims 4-6. The coated particulate peroxo compounds have a spherical shape and have a diameter of from 0.8 mm to 3.0 mm. See claim 8. Note that, with respect to the available oxygen and fizzing properties of the coated percarbonate particles as recited by the instant claims, the Examiner asserts that the coated percarbonate particles specifically taught by '560 would inherently have the same available oxygen and fizzing properties as recited by the instant claims because '560 teaches coated percarbonate particles which are the same as recited by the instant claims. '560 discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of '560 anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of '560 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed available oxygen and fizzing properties of the composition in order to provide the optimum cleaning properties to the composition because '560 teaches that the amounts and types of required components added to the composition may be varied.

Claims 12-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP 962,424.

'424 teaches a sodium percarbonate core, and a coating layer substantially free from sulphate, borate, and magnesium compounds, comprising at least 30% and at most 75% by weight of an alkali metal carbonate and at least 25% and at most 70% by weight of an alkali metal silicate. See Abstract. The coated sodium percarbonate particles usually have a 90% dissolution time of at least 0.5 minutes. See para. 13. The coated sodium percarbonate particles usually present a mean particle size of at least 500 microns. See para. 19. Note that, with respect to the available oxygen and fizzing properties of the coated percarbonate particles as recited by the instant claims, the Examiner asserts that the coated percarbonate particles specifically taught by '424 would inherently have the same available oxygen and fizzing properties as recited by the instant claims because '424 teaches coated percarbonate particles which are the

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same as recited by the instant claims. '424 discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of '424 anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of '424 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed available oxygen and fizzing properties of the composition in order to provide the optimum cleaning properties to the composition because '424 teaches that the amounts and types of required components added to the composition may be varied.

Claims 12-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP 992,575.

'575 teaches alkali metal percarbonate particles having a content of active oxygen from 10% about 15.3% and comprising alkali metal silicate. See Abstract. Additionally, the coating may contain other compounds such as water-soluble magnesium compounds such as magnesium sulfate, alkali metal salts of carbonate, bicarbonate, or sulfate, etc. Suitably, the particles have average diameter of from about 50 to 3000 microns and the preferred density is from about 600 to about 1500 g/l. See paras. 20-23. The coating agent (i.e., stabilizer) may be present in amounts from about 0.01 to 15% by weight of the particles. See para. 17. Note that, with respect to the available oxygen and fizzing properties of the coated percarbonate particles as recited by the instant claims, the Examiner asserts that the coated percarbonate particles

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specifically taught by '575 would inherently have the same available oxygen and fizzing properties as recited by the instant claims because '575 teaches coated percarbonate particles which are the same as recited by the instant claims. '575 discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of '575 anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of '575 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed available oxygen and fizzing properties of the composition in order to provide the optimum cleaning properties to the composition because '575 teaches that the amounts and types of required components added to the composition may be varied.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jakob et al (US 2002/0127168) as applied to claims 12-22, 26-32, and 34-36 above, and further in view of CA 2,326,560 or EP 992,575.

Jakob et al are relied upon as set forth above. However, Jakob et al do not teach the specific particle size of the percarbonate as recited by instant claim 33.

'560 and '575 are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use the specific particle sized percarbonate as recited by instant claim 33 in the process/composition taught by Jakob et al, with a reasonable expectation of success, because '560 and '575 teach percarbonates having the same

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particle size as recited by the instant claims and further, Jakob et al teach the use of particulate percarbonate in general.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1,466,799 as applied to claims 12-16 and 28-36 above, and further in view of CA 2,326,560.

'799 is relied upon as set forth above. However, '799 does not teach the use of silicate as a coating agent in addition to the other requisite components of the composition as recited by instant claim 27.

'560 is relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use silicate as a coating agent in the composition taught by '799, with a reasonable expectation of success, because '560 teaches the equivalence of sodium silicate to sodium sulphate as a coating agent in a similar composition and further, '799 teaches the use of sodium sulphate as a coating agent.

### ***Response to Arguments***

With respect to the rejection of the instant claims under 35 USC 102/103 using Jakob or EP 623,553, Applicant states that Jakob or '553 do not teach or suggest the special properties of available oxygen content and effervescent properties as claimed and that a Declaration has been filed under 37 CFR 1.132 which supports this assertion. In response, note that, the Examiner asserts that the Declaration filed under 37 CFR 1.132 is not sufficient to overcome Jakob et al or '553 and place the instant claims in condition for allowance. Note that, Jakob et al teach that the particles may be

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heated treated at 120 Celsius and it would be expected that if particles according to Jakobe et al were treated for even 30 minutes at 120 degrees Celsius, the particles would have the same fizziness as recited by the instant claims as demonstrated by the table presented in the 132 Declaration. Additionally, while the Declaration states that '553 heats sodium percarbonate at approximately 75 degrees Celsius for approximately 45 minutes to 2 hours which would not result in a percarbonate particle having the same fizziness as recited by the instant claims, '553 teaches that the particles may be preferably heated to 95 degrees Celsius (See page 5, lines 1-20 of '553 and if they were heated for 2 hours as also suggested by '553, it appears that the resultant particles would have the same fizziness as recited by the instant claims. No data has been presented with the preferably temperature of 95 degrees Celsius as taught by '553. Note that, this conclusion appears consistent with the Table submitted in the 132 Declaration. Thus, the Examiner asserts that the Declaration is not sufficient to place the instant claims in condition for allowance.

Note that, several new grounds of rejections have been made as set forth above.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory R. Del Cotto/  
Primary Examiner, Art Unit 1796

/G. R. D./  
December 20, 2008